

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

STEPHEN MCKEAN and  
MICHELLE MCKEAN,  
Plaintiffs,

v.

NATIONWIDE AFFINITY INSURANCE  
COMPANY OF AMERICA and  
JEREMY QUIGLEY,  
Defendants.

CIVIL ACTION NO. 3:15-CV-1294

(Judge Kosik)

FILED  
SCRANTON

OCT 28 2015

PER

DEPUTY CLERK

MEMORANDUM

Before the court is Plaintiffs' Motion to Remand the above-captioned action to the Court of Common Pleas of Pike County (Doc. 4). For the reasons which follow, the Motion to Remand (Doc. 4) will be granted<sup>1</sup>.

BACKGROUND

On May 22, 2015, Plaintiffs, Stephen McKean and Michelle McKean, his wife, filed a Complaint against Defendants, Nationwide Affinity Insurance Company of America ("Nationwide") and Jeremy Quigley, in the Court of Common Pleas of Pike County. The action is based on claims arising out of a motor vehicle accident occurring on August 8, 2012. Count I through Count IV are against Defendant, Nationwide Insurance Company, and are claims for uninsured and underinsured coverage in accordance with the terms of Plaintiffs' insurance policy. Count V through Count VIII<sup>2</sup> against Defendant, Jeremy Quigley, an adjuster employed by Defendant, Nationwide Affinity Insurance Company of America, are based on misrepresentation and fraudulent conduct.

<sup>1</sup>We note that Defendants have filed a Motion to Dismiss/Motion to Strike (Doc. 3). Because the Motion to Remand challenges this court's jurisdiction, we will decide the Motion to Remand (Doc. 4) first.

<sup>2</sup>Plaintiffs' have "Count VII" listed twice in the Complaint. We recognize the second "Count VII" as Count VIII.

On June 30, 2015, Defendant Nationwide filed a Notice of Removal (Doc. 1). In the Notice of Removal, Defendant, Nationwide, asserts that the claims against Defendant, Jeremy Quigley, are “wholly insubstantial and frivolous” and that removal is proper because Jeremy Quigley, who is a citizen of the Commonwealth of Pennsylvania, “has been fraudulently joined in this case solely for the purpose of defeating diversity and preventing removal of this case to federal court.”

On July 10, 2015, Plaintiffs filed a Motion to Remand to the Court of Common Pleas of Pike County (Doc. 4) and a Brief in Support thereof (Doc. 5). On July 22, 2015, Defendant Nationwide filed a Brief in Opposition to the Motion to Remand (Doc. 11).

#### DISCUSSION

In the Motion to Remand, Plaintiffs assert that removal of the instant action was jurisdictionally improper in that Defendant Jeremy Quigley, as well as Plaintiffs, are citizens of Pennsylvania. While Defendant Nationwide does not dispute that Plaintiffs and Defendant Quigley, are citizens of Pennsylvania, Defendant Nationwide asserts that Defendant Quigley was fraudulently joined to defeat diversity of citizenship.

In Count V through Count VIII of the Complaint, Plaintiffs allege claims arising out of misrepresentation and fraud against Defendant Quigley. Plaintiffs also challenge Defendant Quigley's conduct in investigating and evaluating their claims.

Without belaboring the point, we have considered the authorities cited by the parties in support of their respective positions. In reviewing the allegations against Defendant Quigley as set forth in Count V through Count VIII of the complaint, we find that the allegations present a “colorable” claim against Defendant Quigley. See, e.g. Kennedy v. Allstate Ins. Co., 2015 WL 4111816 (E.D. Pa. July 8, 2015). Accordingly, we will grant the Plaintiff's Motion to Remand the above-captioned action to the Court of Common Pleas of Pike County. An appropriate Order follows.